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June 13, 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

VIA ELECTRONIC MAIL Daly.Eric@epa.gov

Mr. Eric Daly
Response and Prevention Branch
U.S. Environmental Protection Agency, Region II
2890 Woodbridge Avenue, Bldg. 205 (MS-211)
Edison, NJ 08837

Re: *Request for Information Pursuant to Section 104 of CERCLA*
Holy Trinity Cemetery Site, 5401 Robert Street, Lewiston, Niagara County,
New York

Dear Mr. Daly:

I am writing on behalf of the Divine Mercy Roman Catholic Parish of Niagara Falls, NY ("Divine Mercy Parish"), which is the owner of the Holy Trinity Cemetery located at 5401 Robert Street, Lewiston, New York (the "Site"), in response to the Environmental Protection Agency's March 30, 2017 Request for Information Pursuant to Section 104 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"). As indicated below, Divine Mercy Parish has very limited information concerning the existence of the radioactive material being investigated at the Site by EPA, but it has conducted a thorough review of records available to it and consulted with individuals most likely to possess any relevant information, and the responses below represent its best efforts to provide EPA whatever information Divine Mercy Parish possesses to assist with EPA's investigation.

Moreover, although EPA has not given any indication that it considers Divine Mercy Parish to be a responsible party with respect to such radioactive material, it should be stated that, by responding to EPA's March 30, 2017 letter, and providing the information below, Divine Mercy Parish is not admitting that it is liable with respect to the alleged environmental contamination released at or from the Site under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or any other federal or state law, and Divine Mercy Parish specifically reserves the right to assert all available defenses to any assertion of such liability by the EPA or others.

Notwithstanding and without waiving the foregoing, Divine Mercy Parish, after conducting appropriate due diligence (including interviews with knowledgeable personnel and reviews of available documents) provides the following information in response to EPA's specific inquiries.

1. Please state the correct legal name and mailing address for the Divine Mercy Parish.

Response: Divine Mercy Roman Catholic Parish of Niagara Falls, NY, 2437 Niagara Street, Niagara Falls, New York, 14303.

2. Please provide a brief description of the operations and activities performed by the Divine Mercy Parish at the Site.

Response: Divine Mercy Parish operates the Holy Trinity Cemetery at the Site. Cemetery operations consist of maintaining the existing burial plots, establishing new burial plots and general maintenance of the Site.

3. State the dates during which the Divine Mercy Parish owned, operated, and/or leased any portion of the Site. If any individuals or entities other than Divine Mercy Parish owned, operated, and/or leased the Site property between 1958 and today, please identify these individuals and entities and the dates of their ownership, operation, and/or lease of the Site property.

Response: From prior to 1910 until 2008, the cemetery was owned and operated by Holy Trinity Roman Catholic Church Society of Niagara Falls, N.Y. ("Holy Trinity Parish") until Holy Trinity Parish (among others) was canonically merged into Divine Mercy Parish in 2008 and the Cemetery property was legally transferred to Divine Mercy Parish in 2012. Divine Mercy Parish has owned and operated the cemetery since that time.

4. Please identify the following individuals and entities:

- a. All Divine Mercy Parish and Holy Trinity Cemetery staff members (e.g., pastors, caretakers, and trustees) between 1958 and 1980;
- b. All individuals that resided at the Site between 1958 and 1980; and
- c. All contractors that performed work at the Site between 1958 and 1980.

Response: As noted above, Divine Mercy Parish has only owned and/or operated Holy Trinity Cemetery since 2008, and thus it has limited information concerning personnel associated with Holy Trinity Parish and Holy Trinity Cemetery during the period of 1958 through 1980. However, based on a review of available archival records and interviews

with knowledgeable individuals, the Pastor and Cemetery Administrator during that entire period was Rev. John Prackajlo, who is believed to be deceased. Divine Mercy Parish has not been able to confirm the identity of all of the on-site caretakers or employees of Holy Trinity Cemetery during that time period; however, Mr. John Strzelczyk, Cemetery Attendant at Holy Trinity Cemetery from 1990 to 2004, has indicated that prior Cemetery Attendants during the relevant time period included Mr. Bernard Tyran (from the late 1970s until 1990) and Mr. Eugene McCullum (during the 1970s). Divine Mercy Parish does not possess current contact information for either individual.

5. With respect to the radioactive slag materials that came to be located at the Site, provide any knowledge, information, and/or documents regarding the following:

- a. The approximate dates the radioactive material came to be located at the Site;
- b. The source of the radioactive material; and
- c. The individuals or entities involved in the generation, handling, storage, transportation, or disposal of the radioactive material.

Response: Divine Mercy Parish has no specific information or records regarding the radioactive slag materials that have been detected at the Site, other than materials that have been provided to it by EPA as part of its on-going investigation of the Site. However, enclosed herewith as **Attachment A** are copies documents indicating that fill material, apparently related to the construction of certain roadways on the Site, were brought to the Site in the early to mid-1960s, although these documents do not indicate the nature of this fill material. Also enclosed herewith as **Attachment B** is a site plan dated January 15, 1967, related to the construction of the Chapel at the Site, which identifies a "slag road" to the north and east of the Chapel.

6. Identify all individuals and entities that/who may have information or documents relating to the radioactive slag material that came to be located at the Site.

Response: Former Holy Trinity Cemetery Attendant John Strzelczyk has stated that he encountered materials he described as "cinders" while performing excavation and other work throughout the Site during his period of employment at Holy Trinity Cemetery, including in the vicinity of the "cemetery road" and "slag road" indicated on the **Attachment B**, in a garden maintained north of the Chapel, the roadway to the north of "Area 9" indicated on the "Soil Sample Location Map" enclosed herewith as **Attachment C**, and within "Area 2" and "Area 4" indicated on **Attachment C**. Other than information relayed by Mr. Strzelczyk, the documents enclosed herewith, and information or documents provided by EPA, Divine Mercy Parish possesses no additional information related to the existence of slag material at the Site.

7. Provide any knowledge, information, and/or documents related to current and/or prior earth-moving activities in and around the following features at the Site, which are identified in the enclosed New York State Department of Environmental Conservation Survey Map:

- a. The "Proposed Roadways";
- b. The "Original Slag Pile Id'd in 1980"; and
- c. The "Pile Exhibiting Elevated Readings".

Response:

a. As indicated in Response to Request No. 5, it appears that fill was brought unto the Site in the early to mid-1960s for the purpose of constructing certain roadways on the Site. In addition, as indicated in a document titled "Claimant's Proposed Findings of Fact", dated July 28, 1965, apparently submitted by Holy Trinity Parish in connection with a condemnation proceeding, a copy of which is enclosed as **Attachment D**, a road was constructed on the Site in 1957, although the location of that road and the source of any fill material associated with that road is unknown. See pp. 11-12 of **Attachment D**.

b. Mr. Strzelczyk recalls observing a debris pile consisting of various materials, including "cinders", drums and other indicia of industrial waste, in the vicinity of "Area 4" as indicated on **Attachment C**, that existed by the time he began his employment at the Site in 1990, but he is unaware of its origins.

c. It is not clear where the "Pile Exhibiting Elevated Readings" referenced in this Request is or was located on the Site, so Divine Mercy Parish cannot provide any additional information concerning this feature.

8. With respect to the roads at the Site and the "Proposed Roadways" referenced in Information Request Number 7.a., please:

- a. Indicate when these roads/roadways were constructed;
- b. Identify all persons and/or entities involved in the construction of the roads/roadways;
- c. Indicate the source of the fill materials used for the construction of the roads/roadways;
- d. Identify all individuals and entities that/who may have information or documents relating to the roads/roadways.

Response: See Response to Request No. 5, above. Divine Mercy Parish does not possess any additional information concerning this Request.

9. Indicate whether you have ever conducted an assessment, investigation, or cleanup of hazardous substances or wastes at the Site. If yes, please identify all environmental contractors and consultants hired to perform the work, describe the activities they conducted at the Site, and indicate the date(s) that the activities took place. Provide copies of all letters, reports, and conclusions issued by the contractors and consultants regarding the Site, including the names of the wastes that were disposed of and the location of disposal.

Response: Divine Mercy Parish has not conducted any assessment, investigation or cleanup activities of any hazardous substances at the Site.

10. Please answer the following questions concerning the involvement of State and local authorities at the Site:

- a. Describe any and all communications that you have had with State and/or local authorities concerning the radioactive material at the Site;
- b. Describe in detail any and all response work performed at the Site by a State or local agency concerning the radioactive material at the Site;
- c. Indicate whether any state or local agency ever transported, disposed of, and/or stored construction debris or radioactive material at the Site. If so, please describe where and the manner in which the debris/material was transported, disposed of, and/or stored.

Response: Divine Mercy Parish does not possess any information responsive to this request. It is not aware of any investigations, response actions, transport, disposal or storage of radioactive material at the Site by State or local authorities (or any other person or entity).

11. Please identify all individuals with knowledge of facts relating to the responses provided to this Request for Information. Please also identify each individual who assisted or was consulted or who answered on your behalf in the preparation of your response to this Request for Information, and specify the question with which each person assisted in responding.

Response: This response was prepared by Charles D. Grieco, Esq., who consulted with the following individuals: Father Jacek Mazur, Pastor of Divine Mercy Parish, Mr. Carmen Calao, Director of Cemeteries, Catholic Cemeteries of the Roman Catholic Diocese of Buffalo, Inc., and Mr. John Strzelczyk, Cemetery Attendant at Holy Trinity Cemetery from 1990 until 2004.

Eric Daly
June 13, 2017
Page 6

12. Please provide any additional information or documents that may help EPA identify parties that may have been a source of, or otherwise been responsible for, the radioactive material that came to be located at the Site.

Response: As noted above, Divine Mercy Parish possesses very little information concerning the origin or existence of the radioactive material detected at the Site, and what information it does possess is enclosed herewith or was provided by EPA.

Enclosed herewith as **Attachment E** is the Certification of Answers to Request for Information duly executed on behalf of Divine Mercy Parish by Fr. Jacek Mazur.

Very truly yours,

BOND, SCHOENECK & KING, PLLC



Charles D. Grieco

CDG/cjk

cc: Margo Ludmer, Esq. (via e-mail Ludmer.Margo@epa.gov)
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